## STATE OF WEST VIRGINIA



# Offices of the Insurance Commissioner

Earl Ray Tomblin Governor Michael D. Riley Insurance Commissioner

## **JULY 2013**

## WEST VIRGINIA INFORMATIONAL LETTER

#### NO. 187

TO: ALL INSURANCE COMPANIES DOING BUSINESS IN WEST VIRGINIA, INSURANCE TRADE

ASSOCIATIONS, INSURANCE MEDIA PUBLICATIONS AND OTHER INTERESTED PERSONS

**RE:** SUMMARY OF 2013 LEGISLATION

This Informational Letter summarizes significant insurance and workers' compensation legislation enacted during the 2013 Regular Session of the West Virginia Legislature. It does not necessarily include all legislation that may affect the insurance industry or insurance consumers and is only intended to highlight the major points in the more important bills. The explanations contained herein should in no way be construed as being indicative of the Insurance Commissioner's views on or interpretation of the legislation.

The bills are available on the Legislature's website at <a href="www.legis.state.wv.us">www.legis.state.wv.us</a>. The rules can be found on the Insurance Commissioner's website at <a href="www.wvinsurance.gov">www.wvinsurance.gov</a> and the Secretary of State's website at <a href="www.wvsos.com">www.wvsos.com</a>.

# **BILLS**

# SENATE BILL 22 – REQUIRING MATERNITY SERVICES COVERAGE FOR ALL HEALTH INSURANCE PLAN DEPENDENTS IN CERTAIN CIRCUMSTANCES. (EFFECTIVE JULY 12, 2013)

This bill requires PEIA and commercial carriers to extend maternity benefits to the children of adult enrollees if the policy covers such services for the enrollee or his/her spouse. Although the extension of this benefit to children is not required to the extent it would exceed the "essential health benefits" (EHB) under the Affordable Care Act, maternity benefits for adult enrollees and their children are currently in the EHB package in West Virginia.

# SENATE BILL 557 – CONTINUING PREVENTIVE CARE PILOT PROGRAM. (EFFECTIVE APRIL 12, 2013)

In 2006, the Legislature established a pilot program to study prepaid primary care clinics that were then operating without oversight from the WV Offices of the Insurance Commissioner (OIC) or the Health Care Authority (HCA). The 2006 bill divided up regulatory authority between OIC, which would review forms, rates and marketing, and HCA, which would exercise primary oversight, approve the participating clinics and submit annual reports. Under the 2006 bill, the pilot program expired in June 2011, but the participating clinics continued to operate. This bill revives the regulatory scheme of the Preventive Care Pilot Program and sets a new expiration date of June 30, 2016. Under the bill, HCA is now required to "report to the Legislative Oversight Commission on Health and Human Resources Accountability on the pilot program by December 1, 2015."

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# HOUSE BILL 2762 – CREATING AN EXEMPTION FROM LICENSURE AS AN ADJUSTER FOR CERTAIN INDIVIDUALS WHO CONDUCT DATA ENTRY INTO AN AUTOMATED CLAIMS ADJUDICATION SYSTEM. (EFFECTIVE JULY 11, 2013)

This bill exempts certain persons -- employees of an insurer or its third party administrator who, under the supervision of a licensed adjuster or producer, conduct data entry into an "automated claims adjudication system" for portable electronics insurance claims -- from the requirement of having to be licensed as adjusters themselves; a qualifying "automated claims adjudication system" is one that is certified as compliant with West Virginia's claims-payment laws by a licensed adjuster who is also an officer of the insurer or TPA. It also provides that a resident of Canada may be licensed as a *nonresident* adjuster if that person has obtained a resident or home state adjuster license in another state with licensure requirements similar to West Virginia's.

# HOUSE BILL 2819 – RELATING TO THE FINANCIAL OVERSIGHT OF ENTITIES REGULATED BY THE INSURANCE COMMISSION. (EFFECTIVE JULY 11, 2013)

This bill updates laws related to regulation of insurer solvency. The first change requires captive insurance companies organized as risk retention groups to comply with risk-based capital requirements. The second change updates a solvency trend test for property and casualty insurance companies in order to give the Commissioner an additional tool to detect and take action with regard to an insurer's potentially deteriorating financial condition. The bill, which is based on two model acts promulgated by the National Association of Insurance Commissioners (NAIC), is necessary for the OIC to maintain its NAIC accreditation that allows other accredited states to rely on OIC's financial examinations of West Virginia domiciliary companies.

# HOUSE BILL 2960 – PROVIDING FOR INTERNAL AND EXTERNAL REVIEW OF ADVERSE HEALTH COVERAGE DETERMINATIONS. (EFFECTIVE JULY 12, 2013)

Under the Affordable Care Act (ACA), most types of denials of health coverage under insurance plans -- "adverse determinations" -- must be subject to external review by independent review organizations (IROs). Such reviews may proceed under a state process if certain minimum standards set forth in federal regulations are observed. West Virginia's external review process, which was limited to HMOs, was deemed non-compliant by the HHS and has thus been preempted by the ACA, resulting in the mandatory use of federal external review processes. This bill provides the statutory foundation, to be more fully implemented in rule, for West Virginia to come into ACA compliance and thus regain oversight authority of external review in this state. Specifically, the bill directs health plan issuers to develop processes for utilization review (how decisions are made by the issuer) and internal grievances (how these decisions are disputed in-house) and to make external review available with respect to all adverse health insurance determinations. It allows both issuers and enrollees to pursue judicial review of IRO decisions in the enrollee's home county and makes the issuer liable for attorneys' fees if it loses its appeal. It also expressly authorizes the OIC to propose rules that are based on the corresponding NAIC model acts.

### HOUSE BILL 3069 – RELATING TO ACCESS TO JUSTICE

This bill, which was recommended for passage by the Access to Justice Commission of the West Virginia Supreme Court of Appeals, amends W. Va. Code §23-5-16 to permit an award of attorney's fees and costs to workers' compensation claimants against private carriers and self-insured employers -- \$500 per litigated medical issue, up to \$2500 per claim -- for a reversal of a denial of authorization for medical benefits; such an award may not, however, be in addition to an award under W. Va. Code 23-2C-21(c), which permits an award of attorney's fees for the *unreasonable* denial of authorization for medical benefits. The bill caps the hourly rate at \$125.

# **LEGISLATIVE RULES**

SENATE BILL 270 – AUTHORIZING DEPARTMENT OF REVENUE PROMULGATE LEGISLATIVE RULES. (BILL EFFECTIVE APRIL 13, 2013; RULE EFFECTIVE MAY 17, 2013)

This bill enacts a new rule, W. Va. Code of St. R. §114-43A-1 *et seq.*, that implements a bill enacted in 2012, H.B. 4438, that among other things requires a new form of licensure for Provider Sponsored Networks. The licensing scheme set forth in the bill and the rule is the same as that applicable to HMOs except for the following differences: (1) A PSN must be "controlled by" one or more federally qualified health centers; (2) upon an adequate showing, solvency requirements may be lowered by the Commissioner; (3) a PSN must allow any willing provider to participate in its networks; and (4) PSNs are restricted to serving Medicaid enrollees.

Please e-mail any questions concerning this Informational Letter to <u>Informational.Letters@wvinsurance.gov</u> or call (304) 558-0401.

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Insurance Commissioner